UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 24 2003

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

Edward H. Murphy
Downstream General Manager
American Petroleum Institute
1220 L Street, NW
Washington, DC 20005-4070

Dear Mr. Murphy:

I am writing in response to concerns raised by several transmix processors who have requested that the United States Environmental Protection Agency (EPA) exercise enforcement discretion to apply downstream sulfur content standards to the gasoline that is recovered from transmix, starting January 1, 2004, pending promulgation of a regulation that would make this change.[1]

On February 10, 2000, EPA promulgated regulations on the sulfur content requirements for gasoline. See, 65 Fed. Reg. 6698. These regulations require, among other things, significant reductions in the sulfur content of gasoline beginning January 1, 2004. Under 40 C.F.R. §§ 80.195 and 80.216, gasoline produced by refiners is subject to both annual average and per-gallon cap sulfur standards. In the early years of the program, less stringent sulfur standards apply to gasoline produced by certain small refiners under 40 C.F.R. § 80.240, and to gasoline produced for use in the geographic phase-in area (GPA) under 40 C.F.R. § 80.216.

The per-gallon gasoline sulfur standard that applies at facilities downstream of the refinery level, such as pipelines and terminals, is the largest per-gallon cap standard that applies to any refinery. During the early years of the program this is the per-gallon cap standard that applies to small and GPA refiners. Even though transmix processors are located downstream of the refinery level, they are considered refiners under EPA fuels regulations because gasoline is

[1] Transmix is a mixture of gasoline and distillate that results when these two products are transported in sequential batches through a petroleum products pipeline, causing mixing to occur at the interface between these two products. A transmix processor operates a facility that separates transmix into its gasoline and distillate portions, normally through distillation, so that these products can be reintroduced into the distribution system.

produced through the transmix distillation process.[2] As such, the refinery-level average and per-gallon cap sulfur standards apply to gasoline produced by transmix processors, instead of the less stringent downstream per-gallon standard.

However, transmix processors have difficulty meeting the refinery sulfur standards for several reasons. Because transmix processors are generally located on pipeline systems downstream of the refiner, they have no control over the sulfur content of the gasoline portion of the transmix they receive. Consequently, the gasoline may be made up partially or entirely of gasoline subject to the less stringent small refiner or GPA standards.

For this reason, the preamble to the gasoline sulfur rule states that EPA will establish different sulfur standards that apply to gasoline produced by transmix processors at a later date. See 65 Fed. Reg. at 6800. EPA has initiated this transmix rulemaking, but it will not be completed prior to January 1, 2004.

Transmix processors perform an important function in the gasoline distribution system, by separating transmix, an unusable product, into its original, commercially viable constituents. If transmix processing were not possible, transmix normally would have to be transported long distances by truck to be re-refined at a crude oil refinery.

Based on the foregoing, I will exercise enforcement discretion to apply sulfur standards for the gasoline produced by transmix processors as follows:

Gasoline produced from transmix without using additional blendstocks

The applicable downstream sulfur per-gallon standard under 40 C.F.R. §§ 80.210 or § 80.220 shall apply to gasoline produced by a transmix processor who merely separates the gasoline from transmix. In addition, these standards apply to gasoline that is produced by blending very small amounts of unprocessed transmix into gasoline (not to exceed 0.25 percent of the gasoline volume). Sampling and testing, pursuant to 40 C.F.R. § 80.330, must be conducted of each batch of gasoline produced from transmix processing or transmix blending in order to assure the applicable downstream sulfur standard is met.

Gasoline produced from transmix and blended with additional blendstocks

Where a transmix processor adds blendstock to the gasoline it separates from transmix, the transmix processor is subject to all requirements under 40 C.F.R. Part 80 that apply to

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[2] As specified in 40 C.F.R. §§ 80.2(h) a refinery is a facility where gasoline is produced. Pursuant to 40 C.F.R. § 80.2(i) a refiner is any person who owns, leases, operates, controls or supervises a refinery. Even though transmix processors are considered refiners, they are not eligible for small refiner status because they do not produce gasoline from crude oil. See 40 C.F.R. § 80.230(a)(4).

refiners, including but not limited to, refinery average and per-gallon cap sulfur standards under 40 C.F.R. §§ 80.195 or 80.216, as applicable, including the sampling and testing provisions of 40 C.F.R. § 80.340(a). However, these refiner requirements only apply to the blendstock that is added, and not to the gasoline distilled from the transmix. In addition, the gasoline produced by adding blendstock to gasoline recovered from the transmix must meet the applicable downstream per-gallon standard, shown through sampling and testing.

This exercise of enforcement discretion is contingent upon the transmix processor meeting all requirements set forth in this letter. This enforcement discretion does not relieve any transmix processor from any other requirements set forth in any motor vehicle fuels regulations. Moreover, if any transmix processor fails to meet all the conditions of this letter, this enforcement discretion shall not apply.

This enforcement discretion is effective January 1, 2004. This exercise of enforcement discretion may be revoked or modified at any time. In addition, this exercise of enforcement discretion terminates upon the effective date of any EPA rulemaking regarding transmix sulfur standards, or December 31, 2005, whichever is earlier.

If you have questions regarding this matter, please call Erv Pickell, Fuels Team Leader, at (303) 236-9506.

Sincerely,

John Peter Suarez
Assistant Administrator

cc: National Petrochemical Refiners Association